

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DIANE C. BURKE,

Plaintiff,

v.

ANDREW SAUL¹,
Commissioner of Social Security,

Defendant.

NO. 3:19-cv-0574

(SAPORITO, M.J.)

MEMORANDUM

The plaintiff, Diane C. Burke, brought this action under 42 U.S.C. § 405(g) and § 1383(c)(3), seeking judicial review of the final decision of the Acting Commissioner of Social Security denying her claim for supplemental security benefits under Title XVI of the Social Security Act.

Among other grounds for appeal, Burke contends that the Administrative Law Judge (“ALJ”) who heard and decided her case was

¹ Andrew Saul was sworn in as Commissioner of Social Security on June 17, 2019. He is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d). See also Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g)(action survives regardless of any change in the person occupying the office of Commissioner of Social Security). The caption in this case is amended to reflect this change.

not properly appointed under the Appointments Clause of the United States Constitution, U.S. Const. art. II, § 2, cl. 2, and therefore she is entitled to a remand for rehearing of her case before a constitutionally appointed ALJ. The plaintiff's administrative hearing was held on March 23, 2018, which occurred prior to July 16, 2018, the date when the Acting Commissioner ratified the appointment of ALJs and approved their appointments as her own to address any Appointments Clause questions involving social security benefits claims. *See* Soc. Sec. Ruling 19-1p, 2019 WL 1324866, at *2; *see also* U.S. Soc. Sec. Admin., EM-180003 REV 2 (Feb. 6, 2019), *available at* <https://secure.ssa.gov/apps10/reference.nsf/links/08062018021025PM>.

In light of the Supreme Court's decision in *Lucia v. Securities and Exchange Commission*, 138 S. Ct. 2044 (2018), and the Third Circuit's recent decision in *Cirko ex rel. Cirko v. Commissioner of Social Security*, 948 F.3d 148 (3d Cir. 2020), we will direct that the Commissioner's decision be VACATED and REMANDED for rehearing before a different, constitutionally appointed ALJ. *See Lucia*, 138 S. Ct. at 2055; *Cirko*, 948 F.3d at 159–60. We further direct that JUDGMENT be entered in favor

of the plaintiff, and that the Clerk mark this case as CLOSED.

Dated: April 3, 2020

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge